S.B. CIVIL WRIT PETITION NO.5006/2007

Date of order : 26.9.2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri G.S. Bafna for the petitioners.
Shri J.K. Singhi for the respondent.

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Heard learned counsel for the parties.

This writ petition has been filed by as many as eight petitioners who have been declined for allotment of flats/houses in Dwarkapuri Multistoried Residential Scheme which was special residential scheme notified for economically weaker section whose income was less than Rs.5000/- per month.

Shri G.S. Bafna, learned counsel for the petitioners submitted that names of the petitioners were selected by lotteries which

was drawn by computer. They were however surpised to receive the communication dated 7.5.2007 informing them that they have been found ineligible for allotment of flats plots because in the enquiry conducted through an independent agency, their income has been found to exceed the limit of Rs.5000/- per month. Learned counsel for the petitioner aruged that neither they were afforded any opportunity of hearing nor any notice to that effect was served on them inasmuch as none of the petitioners was associated in the so called enquiry. It was aruged that if at all the respondents had any doubt about the correctness of the particulars furnished by the petitioners, they ought to have informed the petitioner/petitioners to substantiate the

same, but without providing them any opportunity to explain their position, decision adverse to their interest could not be unilaterally taken by the respondent.

On the other hand, Shri J.K. Singhi, leanred counsel for the respondent argued that such of the applicants whose annual income was exceeding Rs.60,000/- per annum was not eligible to apply for allotment of the flats under the aforesaid scheme because in that event, genuinely eligible persons would get excluded. It was aruged that the respondents entrusted the enquiry to the independent agency M/s. C.M. Birla & Company, New Colony, Padam Bhawan, Jaipur. The report of the enquiry has been placed on record to support this contention.

I have heard learned counsel for the

parties and perused the materials on the record. On perusal of records, it is found that the enquiry report has been obatined on a verification form. This is a proforma of various particulars either furnished by the applicants or obtained by the aforesaid agency and indicates that mostly informations have been obtained by use of tick marks. A cryptic and short handwritten note has been appended thereof which in itself becomes doubtful becuase in the case of petitioner Sanjay Jain, his income was appears to have been initially written as Rs.4,000/- and later it was struck off/overwritten and indicated as Rs.6000/-. In other cases also, the so called enquiry repoort that has been prepared appears to be too sketchy and not inspiring. That is

besides the point, the fact remains that the petitioners have sought to cancel allotments/applications of the petitioners at a stage when their names have been selected by draw of the computerized lottery without providing them any opportunity of hearing to explain their position. In the circumstances, action of the respondent in seeking to cancel the application/allotment of the petitioners is nothing but an arbitrary and colourable exercise of power inviting frown of Article 14 of the Constitution of India.

In view of the aforesaid discussions, the writ petition deserves to be allowed and is accordingly allowed. The action of the respondent in cancelling application/allotment of the petitioners is declared illegal and unconstitutional and the cancellation order

dated 7.5.2007 passed in respect of each of the petitioners is quashed and set aside. However, it would be open to the Rajasthan Housing Board to undertake a fresh exercise of making enquiry into the correctness of the particulars submitted by the petitioners including in regard to their income by associating them with such enquiry and providing them opportunity of hearing.

With these observation and directions the writ petition stands allowed.

(MOHAMMAD RAFIQ), J.

Skant/-